

1 Joshua B. Swigart, Esq. (SBN: 225557)
 2 josh@westcoastlitigation.com
 3 David J. McGlothlin, Esq. (SBN: 253265)
 4 dmcmglothlin@westcoastlitigation.com
HYDE & SWIGART
 5 411 Camino Del Rio South, Suite 301
 San Diego, CA 92108-3551
 Telephone: (619) 233-7770
 Facsimile: (619) 297-1022

6 Attorneys for Plaintiff
 7 Marylou Mancini
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 CLERK US DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 BY J DEPUTY

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

MARYLOU MANCINI,

Plaintiff,

v.

CIR LAW OFFICES LLP,

Defendant.

Case No.: **'08 CV 0241 LAB CAB**

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of
 2 abusive, deceptive, and unfair debt collection practices by many debt
 3 collectors, and has determined that abusive debt collection practices contribute
 4 to the number of personal bankruptcies, to marital instability, to the loss of
 5 jobs, and to invasions of individual privacy. Congress wrote the Fair Debt
 6 Collection Practices Act, 15 U.S.C. § 1692 et seq (hereinafter "FDCPA"), to
 7 eliminate abusive debt collection practices by debt collectors, to insure that
 8 those debt collectors who refrain from using abusive debt collection practices
 9 are not competitively disadvantaged, and to promote consistent State action to

ORIGINAL

protect consumers against debt collection abuses.¹

- 1 2. The California legislature has determined that the banking and credit system
2 and grantors of credit to consumers are dependent upon the collection of just
3 and owing debts and that unfair or deceptive collection practices undermine
4 the public confidence that is essential to the continued functioning of the
5 banking and credit system and sound extensions of credit to consumers. The
6 Legislature has further determined that there is a need to ensure that debt
7 collectors exercise this responsibility with fairness, honesty and due regard for
8 the debtor's rights and that debt collectors must be prohibited from engaging
9 in unfair or deceptive acts or practices.²
- 10 3. MARYLOU MANCINI, ("Plaintiff"), by Plaintiff's attorneys, brings this
11 action to challenge the actions of CIR LAW OFFICES LLP, ("Defendant"),
12 with regard to attempts by Defendant, a debt collector, to unlawfully and
13 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused
14 Plaintiff damages.
- 15 4. Unless otherwise indicated, these allegations are made on information and
16 belief. Further, the use of any defendant's name in this Complaint includes all
17 agents, employees, officers, members, directors, heirs, successors, assigns,
18 principals, trustees, sureties, subrogees, representatives and insurers of that
19 defendant named. All allegations are made on information and belief, except
20 those allegations that pertain to the named Plaintiff(s), or to their attorneys,
21 which are alleged on personal knowledge.

JURISDICTION AND VENUE

- 22 5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 and 15 U.S.C. §
23 1692k(d), and 28 U.S.C. § 1367 for supplemental state law claims.
- 24 6. This action arises out of Defendant's violations of the following: the

25 1 15 U.S.C. §§ 1692(a)-(e)

26 2 Cal. Civ. Code §§ 1788.1 (a)-(b)

1 Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-
2 1788.32 (RFDCPA), the Fair Debt Collection Practices Act, 15 U.S.C. §§
3 1692 et seq.

4

5 7. Because Defendant does business within the State of California, personal
jurisdiction is established.
8
9 8. Venue is proper pursuant to 28 U.S.C. § 1391.

10 **PARTIES**

11 9. Plaintiff is a natural person who resides in the City of San Diego, County of
San Diego, State of California and is obligated or allegedly obligated to pay a
12 debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
13
14 10. Plaintiff is a natural person from whom a debt collector sought to collect a
consumer debt which was due and owing or alleged to be due and owing from
Plaintiff, and is a "debtor" as that term is defined by California Civil Code §
1788.2(h).
15
16 11. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
company operating from the City of San Diego, County of San Diego, State of
California.
17
18 12. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
person who uses an instrumentality of interstate commerce or the mails in a
business the principal purpose of which is the collection of debts, or who
regularly collects or attempts to collect, directly or indirectly, debts owed or
due or asserted to be owed or due another and is therefore a "debt collector" as
that term is defined by 15 U.S.C. § 1692a(6).
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23 13. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the
ordinary course of business, regularly, on behalf of himself or herself or
others, engages in debt collection as that term is defined by California Civil
Code § 1788.2(b), and is therefore a "debt collector" as that term is defined by
California Civil Code § 1788.2(c).

14. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a "consumer debt" and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

15. At all times relevant, Plaintiff was an individual residing within the State of California.
16. Plaintiff is informed and believes, and thereon alleges, that at all times relevant Defendant conducted business in the State of California.
17. Sometime before January 1, 2007, Plaintiff allegedly incurred financial obligations to Capital One Bank that were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and were therefore “debt(s)” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).
18. These financial obligations were primarily for personal, family or household purposes and are therefore “debt(s)” as that term is defined by 15 U.S.C. §1692a(5).
19. Sometime thereafter, but before January 1, 2007, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to whether or not this alleged debt was actually owed.
20. Plaintiff is informed and believes, and thereon alleges, that subsequently, but before January 1, 2007, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.
21. On or about January, 2007, Defendant contacted Plaintiff by telephone and demanded payment of the alleged debt.

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1 22. This telephone call to Plaintiff, by Defendant, was a "communication" as that
2 term is defined by 15 U.S.C. § 1692a(2), a "debt collection" as that term is
3 defined by Cal. Civ. Code 1788.2(b), and an "initial communication"
4 consistent with 15 U.S.C. § 1692g(a) and Cal. Civ. Code § 1812.700(b).

5 23. During this conversation, Plaintiff informed Defendant that an attorney
6 represented Plaintiff. Plaintiff then provided Defendant with the name and
7 contact information of her attorneys.

8 24. On or about late January 2007, Defendant again contacted Plaintiff in an
9 attempt to collect the alleged debt.

10 25. By communicating with Plaintiff with regard to the alleged debt without the
11 prior consent of Plaintiff given directly to Defendant or the express
12 permission of a court of competent jurisdiction, when Defendant knew or
13 should have known that Plaintiff was represented by an attorney and when
14 Defendant had knowledge of or could have readily ascertained the name and
15 address of the Plaintiff's attorney, Defendant violated 15 U.S.C. §§
16 1692c(a)(2), 1692d, and 1692f and Cal. Civ. Code § 1788.17.

17 26. Throughout the months of January, February, March, April and May,
18 Defendant continually contacted Plaintiff by telephone in an attempt to collect
19 the alleged debt.

20 27. During each communication, Plaintiff informed Defendant that an attorney
21 represented Plaintiff.

22 28. Even when Defendant left messages for Plaintiff, Plaintiff would call
23 Defendant back and request they only speak to her attorney.

24 29. By communicating with Plaintiff with regard to the alleged debt without the
25 prior consent of Plaintiff given directly to Defendant or the express
26 permission of a court of competent jurisdiction, when Defendant knew or
27 should have known that Plaintiff was represented by an attorney and when
Defendant had knowledge of or could have readily ascertained the name and

address of the Plaintiff's attorney, Defendant violated 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f.

- 1 30. Because these repeated communications violate the FDCPA, including, but
2 not limited to, 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f, they also violated
3 Cal. Civ. Code §1788.17.
- 4 31. Defendant's continued calls despite Plaintiff's repeated request that they
5 contact Plaintiff's attorney caused Plaintiff a great deal of stress, anxiety, and
6 even the fear of answering the telephone.
- 7 32. On or about May 4, 2007, Defendant sent, and Plaintiff received, a dunning
8 letter addressed to Plaintiff's home and in the name of Defendant.
- 9 33. By communicating with Plaintiff with regard to the alleged debt without the
10 prior consent of Plaintiff given directly to Defendant or the express
11 permission of a court of competent jurisdiction, when Defendant knew or
12 should have known that Plaintiff was represented by an attorney and when
13 Defendant had knowledge of or could have readily ascertained the name and
14 address of the Plaintiff's attorney, Defendant violated 15 U.S.C. §§
15 1692c(a)(2), 1692d, and 1692f.
- 16 34. Because this May 4, 2007 communication violates the FDCPA, including, but
17 not limited to, 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f, it also violated
18 Cal. Civ. Code §1788.17.
- 19 35. On or about June 26, 2007, Defendant filed suit on behalf of Capital One
20 Bank against Plaintiff for the alleged debt.
- 21 36. This June 26, 2007 lawsuit was filed in the County of Orange even though
22 Defendant was aware that Plaintiff resided in the County of San Diego and
23 that any contract was entered was not entered into in Orange County.
- 24 37. By bringing a legal action on a debt against a consumer in a location other
25 than the County Plaintiff currently resides in or where the contract was
26 entered into, Defendant violated 15 U.S.C. § 1692i(a)(2).

1 38. Because this action violated 15 U.S.C. § 1692i(a)(2), it also violated Cal. Civ.
2 Code §1788.17.

3 39. Plaintiff is informed and believes, and thereon alleges, that on or about July
4 11, 2007 Defendant attempted to mail Defendant a copy of the June 26, 2007
5 Summons and Complaint at Plaintiff's former address in Huntington Beach,
6 California.

7 40. Plaintiff is informed and believes, and thereon alleges, that this envelope was
8 returned to Defendant as undeliverable, again alerting Defendant that Plaintiff
9 did not reside in Orange County.

10 41. On or about July 26, 2007, a copy of the June 26, 2007 Summons and
11 Complaint was left in Plaintiff's mailbox in San Diego, California.

12 42. The envelope containing the Summons was addressed to Plaintiff's former
13 address in Huntington Beach, California, and "Return to Sender NOT at this
14 address" was handwritten across the envelope.

15 43. Plaintiff is informed and believes, and thereon alleges, that this envelope was
16 not sent via the United States Postal Service, but was put directly into
17 Plaintiff's mailbox in San Diego, California.

18 44. On or about September 21, 2007 Defendant entered a default judgment against
19 Plaintiff.

20 45. Entering a default judgment against Plaintiff, when Defendant knew Plaintiff
21 had not been properly served was a false, deceptive, or misleading
22 representation or means in connection with the collection of any debt in
23 violation of 15 U.S.C. § 1692e, and 15 U.S.C. § 1692e(10), and an unfair or
24 unconscionable means to collect or attempt to collect an alleged debt in
25 violation of 15 U.S.C. § 1692f.

26 46. Because this action violated the FDCPA, it also violated Cal. Civ. Code
27 §1788.17.

CAUSES OF ACTION CLAIMED BY PLAINTIFF

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 ET SEQ.

47. Plaintiff incorporates by reference all of the above paragraphs of this
5 Complaint as though fully stated herein.
48. The foregoing acts and omissions constitute numerous and multiple violations
6 of the FDCPA, including but not limited to each and every one of the above-
7 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
49. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
10 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
11 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
12 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
13 each Defendant.

COUNT II

VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)

50. Plaintiff incorporates by reference all of the above paragraphs of this
17 Complaint as though fully stated herein.
51. The foregoing acts and omissions constitute numerous and multiple violations
19 of the RFDCPA.
52. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to
21 any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory
22 damages for a knowing or willful violation in the amount up to \$1,000.00
23 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and
24 costs pursuant to Cal. Civ. Code § 1788.30(c) from each Defendant.

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PRAYER FOR RELIEF

1 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant for:

2 **FAIR DEBT COLLECTION PRACTICES ACT**

3 • an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) in an
4 amount to be adduced at trial, from Defendant;

5 • an award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. §
6 1692k(a)(2)(A);

7 • an award of costs of litigation and reasonable attorney's fees, pursuant to
8 15 U.S.C. § 1692k(a)(3).

9 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

10 • an award of actual damages pursuant to California Civil Code §
11 1788.30(a) in an amount to be adduced at trial, from Defendant;

12 • an award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code
13 § 1788.30(b);

14 • an award of costs of litigation and reasonable attorney's fees, pursuant to
15 Cal. Civ. Code § 1788.30(c).

16 **TRIAL BY JURY**

17 53. Pursuant to the seventh amendment to the Constitution of the United States of
18 America, Plaintiff is entitled to, and demands, a trial by jury.

19 Dated: 2/8/8

20 Respectfully submitted,
HYDE & SWIGART

21 By: David J. McGlothlin, Esq.
22 David J. McGlothlin, Esq.
23 Attorney for Plaintiff

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

MARYLOU MANCINI,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David J. McGlothlin (SBN: 253265)
411 Camino Del Rio South, Ste. 301
San Diego, CA 92108
Tel: 819-233-7770

DEFENDANTS

CIR LAW OFFICES LLP.,

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX
(For Diversity Cases Only))**

PT	DEF	PT	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input checked="" type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq., and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code 1788-1788.32 (RFDCPA)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 410 Agriculture	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 313 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	REAL PROPERTY	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 863 DIWC/DIWV (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
CIVIL RIGHTS	CIVIL RIGHTS	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 445 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 865 RSI (405(e))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 530 General	FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 555 Prisoner Conditions	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statute
<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property				

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removal from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER f.r.c.p. 23

DEMAND \$

75000

Check YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 2/8/08

SIGNATURE OF ATTORNEY OF RECORD

147478 \$350.
2/8/08 fm

2008 FEB - 8
CLERK SOUTHERN CALIFORNIA
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08 CV 0241 LAB CAB

ORIGIN

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

147428 - SR

February 08, 2008
15:40:15

Civ Fil Non-Pris
USAO #: 08CV0241 CIV. FIL.
Judge.: LARRY A BURNS
Amount.: \$350.00 CK
Check#: BC#2287

Total-> \$350.00

FROM: MANCINI V. CIR LAW OFFICES
CIVIL FILING